No. 82-1807

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ALBERT SHIELDS, JR., HEIR OF ALBERT SHIELDS, SR., et al.,

Petitioners,

vs.

UNITED STATES OF AMERICA, et al.,

Respondents.

SUPPLEMENTAL APPENDIX

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Counsel for Petitioners

May 16, 1983

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May 16, 1983

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS

ALBERT SHIELDS, SR.

IBLA 76-42 Decided January 5, 1976

Appeal from decision of the Alaska State Office, Bureau of Land Management, rejecting application for allotment pursuant to the Alaska Native Allotment Act, AA 7736.

Affirmed.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Albert Shields, Sr., appeals from the June 4, 1975, decision of the Alaska State Office, Bureau of Land Management (BLM), rejecting his application for an allotment pursuant to the Alaska Native Allotment Act, 34 Stat. 197, *as amended*, 43 U.S.C. §§ 270-1 to 270-3 (1970), repealed by § 18 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1617 (Supp. III, 1973).

There is no doubt that appellant has occupied the land for the requisite period of time. Two employees of the BLM stated after a field report that the appellant described his use of the tract and the physical layout of the tract in precise detail. They further stated:

> I examined this case and believe the applicant has used the subject land and if any native of Alaska deserves an allotment, Albert Shields, Sr. *does*. [Emphasis in original.]

Therefore, there is no doubt that appellant's bona fides are beyond question.

Unfortunately, the law was so framed that appellant's use does not qualify him for an allotment. The pertinent statute provided:

> Allotments in national forests may be made under sections 270-1 to 270-3 of this title if founded on occupancy of the land prior to the establishment of the particular forest or if the Secretary of Agriculture certifies that the land in an application for an allotment is chiefly valuable for agricultural or grazing purposes. (May 17, 1906, ch. 2469, § 2, as added Aug. 2, 1956, ch. 891, § 1(e), 70 Stat. 954[,43 U.S.C. § 270-2 (1973)].)

The land on which appellant's allotment is located lies within the Tongass National Forest which was created in 1909 several years before appellant's birth. Furthermore, a letter from the Regional Forester, dated July 10, 1974, indicates that the land is *not* chiefly valuable for agricultural or grazing purposes. In such cases the land is not subject to allotment. 43 CFR 2561.0-8(c).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Frederick Fishman
Administrative Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

ALBERT SHIELDS, JR., Heir of Albert Shields, Sr.,	)	
Plaintiffs,	)	No. A 77-66 Civil
v.	)	
	)	OPINION
UNITED STATES OF AMERICA, et al.,	)	(Filed Jan. 9, 1981)
Defendants.	)	

This case presents a single issue. Must Alaskan Natives applying for allotments within a national forest under the 1906 Alaska Native Allotment Act establish personal use and occupancy of the land prior to establishment of the forest?[1] Resolution of the issue turns on the construction given section 2 of the 1956 Amendments to the Native Allotment Act.[2]

> Sec. 2. Allotments in national forests may be made under this Act if founded on occupancy of the land prior to the establishment of the particular forest or if the Secretary of Agriculture certifies that the land in an application for an allotment is chiefly valuable for agricultural or grazing purposes.

[1] This court has jurisdiction under 28 U.S.C. § 1353 (1976) and 25 U.S.C. § 345 (1963). Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976). This case is before this court on review of a final decision by the Interior Board of Land Appeals denying Albert Shields, Sr.'s application for allotment.

[2] Act of May 17, 1906, 34 Stat. 197, as amended, Act of August 6, 1956, 70 Stat. 954; repealed by the Alaska Native Claims Settlement Act, § 18, with a savings clause for applications pending on December 18, 1971, 43 U.S.C. § 1617(a) (1980).

The precise question is what the Congress meant by "founded on occupancy of the land prior to the establishment of the particular forest. . ." The plaintiff claims that the applicant must demonstrate that Native occupancy was established prior to the applicable withdrawal for the forest. The defendants contend that the applicant must personally have occupied the land prior to the withdrawal.

Plaintiffs consist of a class of Alaska Natives who have applied for allotments under the 1906 Alaska Native Allotment Act. The land they seek is located within a national forest and was occupied by Alaska Natives prior to the forest withdrawal, but plaintiffs are unable to establish their personal use of it before its withdrawal.

THE 1906 ACT

The Treaty of Cession[3] in which the United States obtained Alaska by purchase from Russia in 1867 did not address the property rights of the Native inhabitants. It provided only that the Natives would be subject to such laws as the United States might adopt with respect to the aboriginal tribes.[4] The Organic Act of 1884[5] contained the first mention of the property rights of Alaskan Natives. Section 8 provided:

> . . . that the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress . . .

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[3] Treaties of March 6, 1867, 15 Stat. 539.

[4] United States v. ARCO, 435 F. Supp. 1009 (D. Alaska 1978), *aff'd* 612 F.2d 1132 (9th Cir. 1980), *cert. denied* ____U.S.____ (1980).

[5] Act of May 17, 1884, 23 Stat. 24.

In 1887 Congress enacted the General Allotment Act[6] which provided:

> Where any Indian not residing upon a reservation, or for whose tribe no reservation has been provided by treaty, Act of Congress, or Executive Order, shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her, and to his or her children . . . .

Since in several decisions Alaskan Natives had been found not to be within the definition of "Indian", there was doubt whether the General Allotment Act applied to Alaska Natives. Congress moved in 1906 to eliminate this doubt[7] by passing the Alaska Native Allotment Act, which provided in part:[8]

> That the Secretary of the Interior is hereby authorized and empowered in his discretion and under such rules as he may prescribe, to allot not to exceed one hundred and sixty acres of nonmineral land in the district of Alaska to any Indian or Eskimo of full or mixed blood who resides in and is a native of said district, and who is the head of a family or is twenty-one years of age: and the land so allotted shall be deemed the homestead of the allottee and his heirs in perpetuity, and shall be inalienable and nontaxable until otherwise provided by Congress. Any person qualified for an allotment as aforesaid shall have

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[6] 25 U.S.C. § 334.

[7] Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976).

[8] Act of May 17, 1906, 34 Stat. 197, as amended, Act of August 6, 1956, 70 Stat. 954; repealed by the Alaska Native Claims Settlement Act, § 18, with a savings clause for applications pending on December 18, 1971, 43 U.S.C. § 1617(a) (1980).

> the preference right to secure by allotment the non-mineral land occupied by him not exceeding one hundred and sixty acres.

In 1910 Congress amended the General Allotment Act[9] to allow for allotments in the national forests:

> The Secretary of the Interior is authorized, in his discretion, to make allotments within the national forests in conformity with the general allotment laws, to any Indian occupying, living on, or having improvements on land included within any such national forest who is not entitled to an allotment on any existing Indian reservation, or for whose tribe no reservation has been provided, or whose reservation was not sufficient to afford an allotment to each member thereof. All applications for allotments under the provisions of this section shall be submitted to the Secretary of Agriculture who shall determine whether the lands applied for are more valuable for agricultural or grazing purposes than for the timber found thereon; and if it be found that the lands applied for are more valuable for agricultural or grazing purposes, then the Secretary of the Interior shall cause allotment to be made as herein provided.

No such amendment was made to the Alaska Native Allotment Act despite the fact that some sixteen million acres of Native lands were set aside by presidential proclamations in 1902, 1907 and 1909 to create what is now the Tongass National Forest.[10] Additional land was set aside by presidential proclamation for the Chugach National Forest commencing in 1907.[11]

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[9] 25 U.S.C. § 337.

[10] *See* Tlingit and Haida Indians of Alaska v. United States, 177 F. Supp. 452, 466-67 (Ct. of Cl. 1959).

[11] Presidential Proclamation of July 23, 1907.

The early decisions of the Department of the Interior relating to allotments within national forests required "actual" occupancy prior to the establishment of the national forest.[12] However, this requirement was dropped in 1935[13] in favor of the "founded on occupancy" language at issue in this lawsuit. The earliest published regulations of the Department of the Interior incorporated this language as well as a provision of the 1910 General Allotment Act making land included within a national forest available for allotment if it was chiefly valuable for agriculture or grazing and personally occupied by the applicant.[14]

The Allotment Act, as adopted in 1906, provided that allotments were inalienable unless otherwise provided by Congress. The 1956 Amendments to the Act were designed to rectify this situation.[15] As originally introduced, the bill addressed only the alienation issue.[16]

Apparently some concern was expressed in the House Subcommittee that Alaska Natives might seek allotments in the national forests solely for the purpose of selling the land to others. To eliminate this danger the substance of the Interior Department's regulations on the subject were enacted into the bill. A report from the Department of the Interior concerning this legislation[17] stated:

> Subsection (e) of the enclosed substitute bill [Sections 2 and 3 of the Act] contains the subcommittee recommendations that are designed to safeguard the national forests. Some fear was expressed during the subcommittee hearings that the authority to sell

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[12] 48 L.D. 70, 71 (1921); 50 L.D. 27, 48 (1923); 51 L.D. 145, 146 (1925).

[13] 55 L.D. 282, 283.

[14] 43 C.F.R. 67.7 (1940).

[15] H.R. Rep. No. 2534, 84th Cong., 2d Sess. (1956).

[16] H.R. 10505, 84th Cong., 2d Sess. (1956).

[17] H.R. Rep. No. 2534, 84th Cong., 2d Sess. 4 (1956).

> homesteads might encourage Indians and Eskimos to seek homestead allotments in the national forests for the purpose of selling them to others. This danger is effectively obviated by enacting into law the substance of the Department's present regulations on the subject, which prohibit homestead selections in the national forests unless they are founded upon occupancy of the land prior to the establishment of the forest, or unless the land selected is determined by the Secretary of Agriculture to be chiefly valuable for agricultural or grazing purposes, and which require the homesteader to prove 5 years' occupancy of the land.

The House Report[18] echoed the Department's analysis:

> Subsection (e) safeguards the national forests by enacting into law the substance of present regulations which prohibit homestead selections in the national forests unless they are founded upon occupancy of the land prior to the establishment of the forest, or unless the land selected is determined by the Secretary of Agriculture to be chiefly valuable for agricultural or grazing purposes, and which require the homesteader to prove 5 years' occupancy of the land.

The Senate Report[19] was even more explicit on the occupancy requirement:

> Allotments may be made in the national forests if the land is chiefly valuable for agricultural or grazing purposes, or if the native had occupied the land prior to the establishment of the forest.

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[18] *Id.* at 2.

[19] S. Rep. No. 2696, 84th Cong., 2d Sess. 1 (1956).

Early administration practice,[20] while sparse,[21] appears to have required individual occupancy of the land prior to the forest withdrawal. Although there were some exceptions to this practice,[22] since the 1956 Amendments, the Department has consistently required individuals seeking allotments to establish their own use and occupancy of the land prior to the establishment of the particular forest withdrawal.[23]

It is obvious that when Congress amended the 1906 Act it gave great weight to the Interior Department's interpretation and practices regarding the statutory language at issue. Such circumstances are persuasive evidence that the interpretation urged by the agency is the one intended by Congress.[24] This principle is especially true when, as here, there are long-standing administrative decisions interpreting the availability of land for Native selection, acceptance of that

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[20] *See e.g.* Yakutat and Southern Railway v. Setuck Harry, Heir of Setuck Jim, 48 L.D. 362, 364 (1921); Frank St. Clair, 52 L.D. 597, 598 (1929).

[21] Although the Native Allotment Act dates back to 1906, few certificates of allotment were granted under the Act for the first 50 years. As of November 8, 1955, a total of 79 allotments had been made pursuant to the Act, and 64 additional applications were under consideration. S. Rep. No. 2696, 84th Cong., 2d Sess. (1956).

[22] See exhibits 25-27 to Plaintiffs' Motion for Summary Judgment.

[23] *See e.g.* Louis P. Simpson, 20 IBLA 387 (1975); Mary Y., 21 IBLA 223 (1975); Christina Laverne Hanlon, 23 IBLA 36 (1975); Estate of Benjamin Wright, 23 IBLA 120 (1975); Nadia Davis Gamble, 23 IBLA 128 (1975); Arthur R. Martin, 41 IBLA 224 (1977). On petition for rehearing in the *Simpson* case the IBLA indicated that those earlier decisions (see note 22) which did not require proof of personal occupancy prior to the withdrawal were erroneous. 41 IBLA 229-30 (1979).

[24] Udall v. Tallman, 380 U.S. 1, 16-18 (1965); Russ v. Wilkens, 624 F.2d 914, 922-24 (9th Cir. 1980).

interpretation by Congress, and enactment of legislation prepared by the agency charged with administration of the Act.[25]

Based on the administrative and legislative history, I conclude that Congress was primarily concerned with allowing for alienation of allotments when it amended the Alaska Native Allotment Act in 1956. Due to its concern that such legislation might encourage the selection and sale of such allotments within national forests, Congress enacted into law the substance of then existing regulations on the subject. I conclude that the intent of Congress in this regard was to restrict allotments within national forests[26] by prohibiting them except to those individuals who could demonstrate personal occupancy of the land prior to the establishment of the forest or unless the land selected is chiefly valuable for agricultural or grazing purposes. I find, therefore, that the language "founded upon occupancy of the land prior to the establishment of the particular forest" requires Alaska Natives who seek allotments within a national forest to demonstrate their personal use and occupancy of that land prior to the establishment of the forest.

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[25] Plaintiffs argue vigorously that the principle of statutory construction requiring ambiguities and doubtful expressions in statutes passed for the benefit of Indians to be resolved in favor of Indians dictates a ruling in their favor. This canon, however, is only a guideline, not a substantive law and should not be used to defeat the manifest intent of Congress. U.S. v. Atlantic Richfield Co., 612 F.2d 1132 (9th Cir. 1980), *cert. denied* ____U.S.____ (1980).

[26] Plaintiffs have strongly argued that Congress could not have intended to require personal use and occupancy of the land prior to the forest withdrawal since the withdrawals occurred in the early 1900's and few Native Alaskans, if any, would have been eligible for allotments when the Act was amended in 1956. This argument assumes, however, that the purpose of the amendments was to assure the right to allotments in the national forests. On the contrary, the purpose of the amendments appears to have been the safeguarding of the national forests from allotments sought only for sale.

Plaintiffs' Motion for Summary Judgment is, therefore, DENIED. Defendants' Cross Motion for Summary Judgment is GRANTED and the case is DISMISSED.

DATED at Anchorage, Alaska, this 9th day of January, 1981.

JAMES M. FITZGERALD
United States District Judge

United States District Court

FOR THE

DISTRICT OF ALASKA

ALBERT SHIELDS, SR., on behalf of himself and all others similarly situated,	)	Civil Action File No. A77-66 CIV
vs.	)	JUDGMENT
UNITED STATES OF AMERICA, CECIL D. ANDRUS, in his capacity as Secretary of the United States Department of the Interior, and ROBERT S. BERGLAND, in his capacity as Secretary of the United States Department of Agriculture.	)	(Filed Jan. 28, 1981)

This action came on for (hearing) before the Court, Honorable James M. Fitzgerald, United States District Judge, presiding, and the issues having been duly (heard) and a decision having been duly rendered,

It is Ordered and Adjudged:

Plaintiffs' Motion for Summary Judgment is DENIED. Defendants' Cross Motion for Summary Judgment is GRANTED and the case is DISMISSED.

Dated at Anchorage, Alaska, this 28th day of January, 1981.

JAMES M. FITZGERALD
U.S. District Court Judge

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALBERT SHIELDS, JR., Heir of Albert Shields, Sr., et al.,	)	No. 81-3120
	)	DC No. A 77-66 CIV
Appellants,	)	
vs.	)	
	)	MEMORANDUM
UNITED STATES OF AMERICA, et al.,	)	(Filed Nov. 10, 1982)
Appellees.	)	

Appeal from the United States District Court
for the District of Alaska
James M. Fitzgerald, District Judge, Presiding

Argued and submitted June 8, 1982

Before: WRIGHT, SKOPIL, and ALARCON, Circuit Judges

Appellant class, approximately 200 applicants for allotments under the 1906 Alaska Native Allotment Act, appeal a district court decision holding that the Allotment Act requires the applicant to establish personal, rather than ancestral, use and occupancy of the land prior to its withdrawal for national forests. We affirm.

I.

In 1906 Congress passed the Alaska Native Allotment Act, Pub. L. No. 171, 34 Stat. 197 (amended 1956, repealed 1971), which authorized the Secretary of the Interior to grant Alaska

Natives allotments of up to 160 acres. In 1956 Congress amended the Allotment Act. Act of Aug. 2, 1956, Pub. L. No. 931, 70 Stat. 954 (codified at 43 U.S.C. §§ 270-1 to 270-3 (1970) (repealed 1971))("Allotment Act").[1] The text of the 1906 Allotment Act became section 1, and was amended to allow alienation. Section 2 provided that allotments in national forests could be made

> "if founded on occupancy of the land prior to the establishment of the particular forest or if the Secretary of Agriculture certifies that the land in an application for an allotment is chiefly valuable for agricultural or grazing purposes."

Section 3 provided that no allotment (whether in or outside a national forest) could be made except on proof of five years "substantially continuous use and occupancy" by the applicant.

On December 13, 1971 Albert Shields, Sr. filed an application for an allotment of 160 acres of land presently within the Tongass National Forest. The land for which he applied had been withdrawn for national forest use by presidential proclamation on February 16, 1909. Mr. Shields alleged that his grandfather had lived on this land beginning in the 1850's. Mr. Shields was born in 1915, and his use of the land began in 1920. The BLM rejected Mr. Shields' application for allotment because he had failed to demonstrate either personal use prior to the withdrawal or that the land was chiefly valuable for agricultural or grazing. The Interior Board of Land Appeals ("IBLA") rejected Mr. Shields' appeal for the same reasons. 23 IBLA 188 (January 5, 1976).

Mr. Shields filed this action in district court in the District of Columbia on February 23, 1977 to review the IBLA denial of the application for allotment. The case was transferred to

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[1] The Allotment Act was repealed by section 18 of the Alaska Native Claim Settlement Act ("ANCSA"), 43 U.S.C. § 1617, with a savings clause for applications pending on December 18, 1971. 43 U.S.C. § 1617(a).

the District of Alaska on motion of the United States. The plaintiff, Albert Shields, Sr., died on November 13, 1977 and Albert Shields, Jr. was substituted as plaintiff.

The district court certified a plaintiff class of all Alaska Natives who had made timely application for allotments under the Alaska Native Allotment Act for land located within a national forest whose applications had been denied on the grounds that they cannot establish personal occupancy of that land prior to the forest withdrawal. Both sides filed cross-motions for summary judgment.

On January 9, 1981 the district court granted the government's motion for summary judgment and held that Alaska Natives applying for allotments within a national forest under the 1906 Alaska Native Allotment Act must establish personal, rather than ancestral, use and occupancy of the land prior to establishment of the national forest.

II.

The sole issue before us is whether Alaska Natives applying for allotments within a national forest under the Alaska Native Allotment Act must establish personal, rather than ancestral, use and occupancy of the land prior to establishment of the national forest.

III.

Section 2 of the Alaska Native Allotment Act, as amended in 1956, provides:

> "Sec. 2. Allotments in national forests may be made under this Act if *founded on occupancy of the land prior to the establishment of the particular forest* or if the Secretary of Agriculture certifies that the land in an application for an allotment is chiefly valuable for agricultural or grazing purposes."

43 U.S.C. § 270-2 (1970) (repealed 1971) (emphasis added). The government contends the statute requires that the applicant must personally have occupied the land prior to the withdrawal; appellant claims that occupancy by a direct ancestor is sufficient.

In interpreting statutes the court's objective is to ascertain the intent of Congress. *Philbrook v. Glodgett,* 421 U.S. 707 (1975). The primary rule of statutory construction is to ascertain and give effect to the plain meaning of the language used. *Hughes Air Corp. v. Public Utilities Comm.,* 644 F.2d 1334 (9th Cir. 1981). The language of the statute, however, does not aid our search for congressional intent, in that the statute itself is ambiguous regarding whether personal or ancestral occupancy is required.

Appellants argue that unless section 2 is read to require only ancestral occupancy, the additional requirement of five years use and occupancy in section 3 would be rendered meaningless, in violation of the rule of statutory construction that one provision should not be interpreted in a way which is internally contradictory or that renders other provisions of the same statute inconsistent or meaningless. *Hughes Air Corp., supra,* at 1337; *Jacobson v. Rose,* 592 F.2d 515 (9th Cir. 1978), *cert. denied,* 442 U.S. 930 (1979); *Patagonia Corp. v. Board of Governors of Federal Reserve System,* 517 F.2d 803 (9th Cir. 1975). This argument is meritless. The section 3 five year occupancy requirement applies to allotments under both sections 1 and 2. Section 1 authorizes allotments from any public lands in Alaska, while section 2 authorizes allotments under specific conditions from national forest lands. Thus, the personal occupancy requirement of section 3 has meaning as applied to section 1 allotments, regardless of the interpretation of section 2.

Because the language of the statute does not reveal congressional intent, we must look to the legislative history. *Heppner v. Alyeska Pipeline Service Co.,* 665 F.2d 868 (9th Cir.

1981). The 1956 amendments to the 1906 Alaska Native Allotment Act began as a House bill, HR 11696. The House Report states that sections 2 and 3 "[safeguard] the national forests by enacting into law the substance of present regulations which prohibit homestead selections in the national forests unless they are founded upon occupancy of the land prior to the establishment of the forest . . . ." H.R. Rep. No. 2534, 84th Cong., 2d Sess. 2 (1956) [hereinafter cited as House Report].

The Senate Report, though, clearly states that "[a]llotments may be made in the national forests...*if the native had occupied* the land prior to the establishment of the forest." S. Rep. No. 2696, 84th Cong., 2d Sess. 1, *reprinted at* 1956 U.S. Code Cong. & Ad. News 4201, 4202 (emphasis added). This sentence suggests that personal, rather than ancestral, use is required.

Both the House and Senate Reports clearly state that sections 2 and 3 were "enacting into law the substance of the Department's present regulations on the subject" of allotments. House Report at 4; Senate Report at 4, *reprinted in* 1956 U.S. Code & Ad. News at 4204. We therefore look to the Department of the Interior's contemporaneous regulations for the interpretation of "occupancy."

The early regulations of the Department of the Interior relating to allotments within national forests required that allotments must be "founded on *actual* occupancy prior to the establishment of the forest." 48 L.D. 70, 71 (1921); 50 L.D. 27, 48 (1923); 51 Pub. Lands Dec. 145, 145-46 (1925) (emphasis supplied). In 1935 the Department dropped the word "actual" from its regulations, and from then on utilized the "founded on occupancy" language that was subsequently enacted into the amended Alaska Native Allotment Act. 55 Interior Dec. 282, 283 (1935); 43 C.F.R. § 67.7 (1938-1954); 43 C.F.R. § 67.2 (1958); 43 C.F.R. § 2212.9-2(c) (1965); 43 C.F.R. § 2561.0-8(c) (1977). The regulations contain no explanation of what is meant by the term "occupancy," nor any indication that the deletion of the word "actual" indicated a change in legal rights.

The administrative practice with regard to these regulations at the time of the 1956 amendments gives little aid in determining the meaning of the term "occupancy." There has been minimal implementation of the Native Allotment program. *United States v. Atlantic Richfield Co.*, 435 F.Supp. 1009, 1015 (D. Alaska 1977), *aff'd*, 612 F.2d 1132 (9th Cir.), *cert. denied*, 449 U.S. 888 (1980); S. Rep. No. 405, 92d Cong., 1st Sess. at 91 (1971). As of the time of congressional consideration of the 1956 amendments, a total of 79 allotments had been made pursuant to the 1906 Act. House Report at 3. There are very few reported decisions of the Department of the Interior regarding these allotments. The earlier published decisions do not address the issue in this case, as they involved natives whose personal use of the land predated the establishment of the national forest (the national forest having been recently established). *Yakutat & Southern Railway v. Setuck Harry, Heir of Setuck Jim*, 48 L.D. 362 (1921); *Frank St. Clair*, 52 L.D. 597 (1929).

In several unpublished decisions in the 1950's the Bureau of Land Management permitted allotments on the basis of ancestral rather than personal occupancy. *Jack Gamble*, Anchorage 017456 (August 10, 1951) (decision by Director of BLM); *Charles G. Benson*, Juneau 011549 (August 24, 1961); *John Littlefield*, Anchorage 133471 (April 28, 1961). However, these decisions were unpublished and of little precedential value.

Since the 1956 amendments the only published I.B.L.A. decisions regarding allotments, involving about 200 consolidated cases in the 70's, held that personal occupancy was required by the Allotment Act. *Louis P. Simpson*, 20 I.B.L.A. 387 (June 16, 1975), petition for reconsideration denied, 41 I.B.L.A. 229 (Oct. 30, 1975); *Mary Y. Paul*, 21 I.B.L.A. 223 (July 31, 1975); *Christina Laverne Hanlon*, 23 I.B.L.A. 36 (December 2, 1975); *Estate of Benjamin Wright*, 23 I.B.L.A. 120 (December 23, 1975); *Nadja Davis Gamble*, 23 I.B.L.A. 128 (December 23, 1975); *Albert Shields, Sr.*, 23 I.B.L.A. 188 (January 5,1976); and *Arthur R. Martin*, 41 I.B.L.A. 224 (June

27, 1979). The Board dismissed the 1950's decisions of *Gamble, Benson,* and *Littlefield* as possibly erroneous and nonprecedential. *Louis P. Simpson, supra,* 41 I.B.L.A. 229 (petition for reconsideration).

CONCLUSION

After reviewing the legislative and administrative history, we conclude that Congress intended to limit allotments on national forest lands to those individuals whose personal occupancy antedated the withdrawal of the land for the national forest. Accordingly, the decision of the district court is AFFIRMED.